

REFERENCE TITLE: board of behavioral health examiners

State of Arizona
House of Representatives
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HB 2780

Introduced by
Representatives Reagan, Knaperek, Quelland: Bradley, Hershberger, Lopez L

AN ACT

AMENDING SECTIONS 32-3253, 32-3254, 32-3272, 32-3274, 32-3281, 32-3282 AND 41-1376, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF BEHAVIORAL HEALTH EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-3253, Arizona Revised Statutes, is amended to
3 read:

4 32-3253. Powers and duties

5 A. The board shall:

6 1. Adopt rules consistent with and necessary or proper to carry out
7 the purposes of this chapter.

8 2. Administer and enforce this chapter, rules adopted pursuant to this
9 chapter and orders of the board.

10 3. Issue a license by examination, reciprocity or temporary
11 recognition to, and renew the license of, each person who is qualified to be
12 licensed pursuant to this chapter. THE BOARD MUST ISSUE OR DENY A LICENSE
13 WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE APPLICANT SUBMITS A COMPLETED
14 APPLICATION.

15 4. Establish a licensure fee schedule annually, by a formal vote at a
16 regular board meeting.

17 5. Collect fees and spend monies.

18 6. Keep a record of all persons licensed pursuant to this chapter,
19 actions taken on all applications for licensure, actions involving renewal,
20 suspension, revocation or denial of a license or probation of licensees and
21 the receipt and disbursement of monies.

22 7. Adopt an official seal for attestation of licensure and other
23 official papers and documents.

24 8. Employ temporary or permanent personnel as it deems necessary.

25 9. Conduct investigations and determine on its own motion if a
26 licensee or an applicant has engaged in unprofessional conduct, is
27 incompetent or is mentally or physically unable to engage in the practice of
28 behavioral health.

29 10. Conduct disciplinary actions pursuant to this chapter and board
30 rules.

31 11. Establish and enforce standards or criteria of programs or other
32 mechanisms to ensure the continuing competence of licensees.

33 12. Establish and enforce compliance with professional standards and
34 rules of conduct for licensees.

35 13. Engage in a full exchange of information with the licensing and
36 disciplinary boards and professional associations for behavioral health
37 professionals in this state and other jurisdictions.

38 B. The board may join professional organizations and associations
39 organized exclusively to promote the improvement of the standards of the
40 practice of behavioral health, protect the health and welfare of the public
41 or assist and facilitate the work of the board.

42 Sec. 2. Section 32-3254, Arizona Revised Statutes, is amended to read:

43 32-3254. Board of behavioral health examiners fund; subaccount

44 A. A board of behavioral health examiners fund is established.
45 Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent

of all monies received by the board PURSUANT TO SECTION 32-3272, SUBSECTIONS A AND B in the state general fund and deposit the remaining ninety per cent in the board of behavioral health examiners fund.

B. THE BOARD SHALL DEPOSIT ALL MONIES COLLECTED PURSUANT TO SECTION 32-3272, SUBSECTION C IN THE BOARD OF BEHAVIORAL HEALTH EXAMINERS FUND. THE BOARD SHALL SEPARATELY ACCOUNT FOR THESE MONIES IN A SUBACCOUNT OF THAT FUND.

~~B.~~ C. All monies deposited in the board of behavioral health examiners fund are subject to section 35-143.01.

Sec. 3. Section 32-3272, Arizona Revised Statutes, is amended to read:

32-3272. Fees

A. The board shall establish and charge reasonable fees of not to exceed two hundred fifty dollars for issuance and renewal of a license issued pursuant to this chapter.

B. The board shall establish fees to produce monies that approximate the cost of maintaining the board and the credentialing committees.

C. THE BOARD BY RULE MAY ESTABLISH A FEE RELATING TO THE DUTIES OF THE OMBUDSMAN-CITIZENS AIDE PRESCRIBED IN SECTION 41-1376, SUBSECTION A, PARAGRAPH 8.

Sec. 4. Section 32-3274, Arizona Revised Statutes, is amended to read:

32-3274. Reciprocity

A. The board may issue a license to a person in that person's particular behavioral health profession if the person is licensed or certified by another state regulatory agency at an equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Submits a written application prescribed by the board.
2. Is of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
3. Documents to the board's satisfaction proof of initial licensure or certification at an equivalent designation for which the applicant is seeking licensure in this state and proof that the license or certificate is current and in good standing.
4. Documents to the board's satisfaction proof that any other license or certificate issued to the applicant by another state has not been suspended or revoked. If a licensee or certificate holder has been subjected to any other disciplinary action, the board may assess the magnitude of that action and make a decision regarding reciprocity based on this assessment.
5. Meets any other requirements prescribed by the board.

B. IF AN APPLICANT DOES NOT MEET THE RECIPROCITY REQUIREMENTS OF THIS SECTION OR AS PRESCRIBED BY THE BOARD PURSUANT TO THIS SECTION, THE BOARD MUST PROVIDE THE APPLICANT WITH A CORRECTIVE PLAN THAT OUTLINES WHAT DEFICIENCIES THE APPLICANT MUST CORRECT. THE BOARD MAY ISSUE A PROVISIONAL LICENSE TO THE APPLICANT OF NOT MORE THAN ONE YEAR TO ALLOW THE APPLICANT TIME TO CURE THE DEFICIENCIES IN THE APPLICATION FOR RECIPROCITY. THE BOARD MAY RENEW A PROVISIONAL LICENSE ISSUED PURSUANT TO THIS SUBSECTION ONE TIME.

1 A PERSON ISSUED A PROVISIONAL LICENSE MUST PRACTICE UNDER THE SUPERVISION OF
2 A PERSON WHO HOLDS AN UNRESTRICTED LICENSE ISSUED PURSUANT TO THIS CHAPTER
3 AND WHO PRACTICES THE SAME BEHAVIORAL HEALTH PROFESSION AS THE APPLICANT.

4 Sec. 5. Section 32-3281, Arizona Revised Statutes, is amended to read:

5 32-3281. Disciplinary action; hearings; civil penalty

6 A. A credentialing committee, on its own motion or on a complaint, may
7 investigate any evidence that appears to show that a licensee is or may be
8 incompetent, is or may be guilty of unprofessional conduct or is or may be
9 mentally or physically unable to safely engage in the practice of behavioral
10 health. As part of its investigation, a credentialing committee may hold an
11 investigational meeting pursuant to this chapter. Any person may, and a
12 licensee and any entity licensed by the office of behavioral health licensure
13 shall, report to the board any information that would cause a reasonable
14 licensee to believe that another licensee is guilty of unprofessional conduct
15 or is physically or mentally unable to provide behavioral health services
16 competently or safely. Any person or entity that reports or provides
17 information to the board in good faith is not subject to an action for civil
18 damages. It is an act of unprofessional conduct for any licensee to fail to
19 report as required by this section. The board shall report to the office of
20 behavioral health licensure in the department of health services any entity
21 licensed by the office of behavioral health licensure that fails to report as
22 required by this section.

23 B. A credentialing committee shall require any combination of mental,
24 physical or oral or written competency examinations, at the licensee's own
25 expense, and conduct necessary investigations, including investigational
26 interviews between representatives of the board and the licensee, to fully
27 inform itself with respect to any information filed with the board under
28 subsection A of this section. These examinations may include biological
29 fluid testing. The credentialing committee may require the licensee, at the
30 licensee's expense, to undergo assessment by a rehabilitative, retraining or
31 assessment program approved by the credentialing committee.

32 C. If the board finds, based on the information received pursuant to
33 subsection A or B of this section, that the public health, safety or welfare
34 imperatively requires emergency action, and incorporates a finding to that
35 effect in its order, the board may restrict, limit or order a summary
36 suspension of a license pending proceedings for revocation or other action.
37 If the board takes action pursuant to this subsection, it must also serve the
38 licensee with a written notice that states the charges and that the licensee
39 is entitled to a formal hearing before the board or an administrative law
40 judge within sixty days.

41 D. If after completing an investigational meeting the credentialing
42 committee finds that the information provided is not of sufficient
43 seriousness to merit disciplinary action against the licensee, the
44 credentialing committee shall recommend either of the following actions to
45 the board:

1 1. Dismiss if, in the opinion of the credentialing committee, the
2 complaint is without merit.

3 2. File a letter of concern and dismiss the complaint.

4 E. If after completing its investigation the credentialing committee
5 believes that the information is or may be true, the credentialing committee
6 ~~can~~ MAY recommend that the board enter into a consent agreement with the
7 licensee to limit or restrict the licensee's practice or to rehabilitate the
8 licensee, protect the public and ensure the licensee's ability to safely
9 engage in the practice of behavioral health. A consent agreement may also
10 require the licensee to successfully complete a board approved
11 rehabilitative, retraining or assessment program.

12 F. If on receipt of a credentialing committee's recommendation the
13 board finds that the information provided pursuant to subsection A of this
14 section is not of sufficient seriousness to merit direct action against the
15 licensee, the board may take either of the following actions:

16 1. Dismiss if, in the opinion of the board, the complaint is without
17 merit.

18 2. File a letter of concern and dismiss the complaint. The licensee
19 may file a written response with the board within thirty days after the
20 licensee receives the letter of concern.

21 G. If on receipt of a credentialing committee's recommendation the
22 board finds that the information provided pursuant to subsection A of this
23 section is or may be true, the board may enter into an agreement with the
24 licensee to limit or restrict the licensee's practice or to rehabilitate the
25 licensee, protect the public and ensure the licensee's ability to safely
26 engage in the practice of behavioral health. The board may also require the
27 licensee to successfully complete a board approved rehabilitative, retraining
28 or assessment program.

29 H. If on receipt of a credentialing committee's recommendation the
30 board finds that the information provided pursuant to subsection A of this
31 section is or may be true, the board may request a formal interview with the
32 licensee. If the licensee refuses the invitation for a formal interview or
33 accepts and the results indicate that grounds may exist for revocation or
34 suspension of the licensee's license for more than twelve months, the board
35 shall issue a formal complaint and order that a hearing be held pursuant to
36 title 41, chapter 6, article 10. If after completing a formal interview the
37 board finds that the protection of the public requires emergency action, the
38 board may order a summary suspension of the licensee's license pending formal
39 revocation proceedings or other action authorized by this section.

40 I. If after completing the formal interview the board finds the
41 information provided is not of sufficient seriousness to merit suspension for
42 more than twelve months or revocation of the license, the board may take the
43 following actions:

44 1. Dismiss if, in the opinion of the board, the information is without
45 merit.

2. File a letter of concern and dismiss the complaint. The licensee may file a written response with the board within thirty days after the licensee receives the letter of concern.

3. Issue a decree of censure. A decree of censure is an official action against the licensee's license and may include a requirement for restitution of fees to a client resulting from violations of this chapter or rules adopted pursuant to this chapter.

4. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension not to exceed twelve months, restriction of the licensee's license to practice behavioral health, a requirement for restitution of fees to a client or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter, including noncompliance with the terms of probation or a consent agreement.

J. If the board finds that the information provided in subsection A or H of this section warrants suspension or revocation of a license issued under this chapter, the board shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

K. In a formal interview pursuant to subsection H of this section or in a hearing pursuant to subsection J of this section, the board in addition to any other action may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.

L. A letter of concern is a public document.

M. A licensee who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable to safely engage in the practice of behavioral health or to be professionally incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge all costs incurred in the course of the investigation and formal hearing to the licensee it finds is in violation of this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the board of behavioral health examiners fund established by section 32-3254.

N. If the board during the course of any investigation determines that a criminal violation may have occurred involving the delivery of behavioral

1 health services, the board shall make the evidence of violations available to
2 the appropriate criminal justice agency for its consideration.

3 O. The board shall deposit, pursuant to sections 35-146 and 35-147,
4 all monies collected from civil penalties paid pursuant to this chapter in
5 the state general fund.

6 P. Notice of a complaint and hearing is effective by a true copy of
7 the notice being sent by certified mail to the licensee's last known address
8 of record in the board's files. Notice of the complaint and hearing is
9 complete on the date of its deposit in the mail.

10 Q. In determining the appropriate disciplinary action under this
11 section, the board shall consider all previous nondisciplinary and
12 disciplinary actions against a licensee.

13 R. The board may defer action with regard to an impaired licensee who
14 voluntarily signs an agreement, in a form satisfactory to the board, agreeing
15 to practice restrictions and treatment and monitoring programs deemed
16 necessary by the board to protect the public health and safety. A licensee
17 who is impaired and who does not agree to enter into an agreement with the
18 board is subject to other action as provided pursuant to this chapter.

19 S. Subject to an order duly entered by the board, a person whose
20 license to practice behavioral health has been suspended or restricted
21 pursuant to this chapter, whether voluntarily or by action of the board, may
22 at reasonable intervals apply to the board for reinstatement of the license.
23 The person shall submit the application in writing and in the form prescribed
24 by the board. After conducting an investigation and hearing, the board may
25 grant or deny the application or modify the original finding to reflect any
26 circumstances that have changed sufficiently to warrant modification. The
27 board may require the applicant to pass an examination, ~~OR~~ complete board
28 imposed continuing education requirements or MAY IMPOSE any other sanctions
29 the board deems appropriate for reentry into the practice of behavioral
30 health.

31 T. A person whose license is revoked, suspended or not renewed must
32 return the license to the offices of the board within ten days after notice
33 of that action.

34 U. The board may enforce a civil penalty imposed pursuant to this
35 section in the superior court in Maricopa county.

36 V. THE BOARD SHALL NOT POST INFORMATION ON ITS WEB SITE REGARDING A
37 COMPLAINT THAT IS BEING REVIEWED BY A CREDENTIALING COMMITTEE. IF A
38 CREDENTIALING COMMITTEE HAS REFERRED A COMPLAINT TO THE BOARD FOR FULL
39 INVESTIGATION, INFORMATION RELEASED TO THE PUBLIC BY THE BOARD REGARDING AN
40 ONGOING INVESTIGATION MUST CLEARLY INDICATE THAT THE INVESTIGATION IS A
41 PENDING COMPLAINT AND MUST INCLUDE THE FOLLOWING STATEMENT:

42 PENDING COMPLAINTS REPRESENT UNPROVEN ALLEGATIONS. ON
43 INVESTIGATION, MANY COMPLAINTS ARE FOUND TO BE WITHOUT MERIT AND
44 ARE DISMISSED.

Sec. 6. Section 32-3282, Arizona Revised Statutes, is amended to read:
32-3282. Right to examine and copy evidence; summoning
witnesses and documents; taking testimony; right to
counsel

A. In connection with information received pursuant to section 32-3281, subsection A, the board or a credentialing committee or the board's or committee's authorized agents or employees at all reasonable times ~~shall~~ have access to, for the purpose of examination, and the right to copy any psychotherapy notes, documents, reports, records or other physical evidence of any person being investigated, or the reports, records and any other documents maintained by and in possession of any hospital, clinic, physician's office, laboratory, pharmacy or health care institution as defined in section 36-401 or any other public or private agency, if the psychotherapy notes, documents, reports, records or evidence relate to the ~~unauthorized practice of behavioral health or to the competence, unprofessional conduct or mental or physical ability of a licensee to safely practice~~ SPECIFIC COMPLAINT.

B. For the purpose of all investigations and proceedings conducted by a credentialing committee:

1. The board or a credentialing committee on its own initiative may issue subpoenas compelling the attendance and testimony of witnesses or demanding the production for examination or copying of documents or any other physical evidence if the evidence relates to the unauthorized practice of behavioral health or to the competence, unprofessional conduct or mental or physical ability of a licensee to safely practice. Within five days after the service of a subpoena on any person requiring the production of any evidence in that person's possession or under that person's control, the person may petition the board or the credentialing committee to revoke, limit or modify the subpoena. The board or the credentialing committee shall revoke, limit or modify a subpoena if in its opinion the evidence required does not relate to unlawful practices covered by this chapter or is not relevant to the charge that is the subject matter of the hearing or investigation or the subpoena does not describe with sufficient particularity the physical evidence required to be produced. Any member of the board or a credentialing committee and any agent designated by the board may administer oaths, examine witnesses and receive evidence.

2. Any person appearing before the board or a credentialing committee may be represented by counsel.

3. The superior court, on application by the board or a credentialing committee or by the person subpoenaed, has jurisdiction to issue an order either:

(a) Requiring the person to appear before the board or a credentialing committee or the authorized agent to produce evidence relating to the matter under investigation.

1 (b) Revoking, limiting or modifying the subpoena if in the court's
2 opinion the evidence demanded does not relate to unlawful practices covered
3 by this chapter or is not relevant to grounds for disciplinary action that
4 are the subject matter of the hearing or investigation or the subpoena does
5 not describe with sufficient particularity the physical evidence required to
6 be produced. Any failure to obey an order of the court may be punished by
7 the court as contempt.

8 C. Records, including clinical records, reports, files or other
9 reports or oral statements relating to examinations, findings or treatments
10 of clients, any information from which a client or the client's family might
11 be identified or information received and records kept by the board or a
12 credentialing committee as a result of the investigation procedure prescribed
13 by this chapter are not available to the public.

14 D. This section and any other law that makes communications between a
15 licensee and the licensee's client a privileged communication ~~does~~ DO not
16 apply to investigations or proceedings conducted pursuant to this chapter.
17 The board and a credentialing committee and the board's and committee's
18 employees, agents and representatives shall keep in confidence the names of
19 any clients whose records are reviewed during the course of investigations
20 and proceedings pursuant to this chapter.

21 Sec. 7. Section 41-1376, Arizona Revised Statutes, is amended to read:

22 41-1376. Powers and duties

23 A. The ombudsman-citizens aide shall:

24 1. Investigate the administrative acts of agencies pursuant to section
25 41-1377, subsections A and B except as provided in section 41-1377,
26 subsections C, D and E. The ombudsman-citizens aide shall investigate the
27 administrative acts of an agency without regard to the finality of the
28 administrative act.

29 2. Annually before January 1 prepare a written report to the governor,
30 the legislature and the public that contains a summary of the
31 ombudsman-citizens aide's activities during the previous fiscal year. The
32 ombudsman-citizens aide shall semiannually present this report before the
33 legislative council. This report shall include:

34 (a) The ombudsman-citizens aide's mission statement.

35 (b) The number of matters that were within each of the categories
36 specified in section 41-1379, subsection B.

37 (c) Legislative issues affecting the ombudsman-citizens aide.

38 (d) Selected case studies that illustrate the ombudsman-citizens
39 aide's work and reasons for complaints.

40 (e) Ombudsman-citizens aide's contact statistics.

41 (f) Ombudsman-citizens aide's staff.

42 3. Before conducting the first investigation, adopt rules that ensure
43 that confidential information that is gathered will not be disclosed.

1 4. Appoint a deputy ombudsman and prescribe the duties of employees
2 or, subject to appropriation, contract for the services of independent
3 contractors necessary to administer the duties of the office of
4 ombudsman-citizens aide. All staff serves at the pleasure of the
5 ombudsman-citizens aide, and they are exempt from chapter 4, articles 5 and 6
6 of this title. All staff shall be subject to the conflict of interest
7 provisions of title 38, chapter 3, article 8.

8 5. Before conducting the first investigation, adopt rules that
9 establish procedures for receiving and processing complaints, including
10 guidelines to ensure each complainant has exhausted all reasonable
11 alternatives within the agency, conducting investigations, incorporating
12 agency responses into recommendations and reporting findings.

13 6. Notify the chief executive or administrative officer of the agency
14 in writing of the intention to investigate unless notification would unduly
15 hinder the investigation or make the investigation ineffectual.

16 7. Appoint an assistant to help the ombudsman-citizens aide
17 investigate complaints relating to child protective services in the
18 department of economic security. The assistant shall have expertise in child
19 protective services procedures and laws. Notwithstanding any law to the
20 contrary, the ombudsman-citizens aide and the assistant have access to child
21 protective services records and to any automated case management system used
22 by child protective services in the department of economic security.

23 8. SUBJECT TO THE AVAILABILITY OF SUFFICIENT MONIES DEPOSITED PURSUANT
24 TO SECTION 32-3254, SUBSECTION B, ASSIST APPLICANTS AND LICENSEES TO RESOLVE
25 CONFLICTS WITH THE BOARD OF BEHAVIORAL HEALTH EXAMINERS REGARDING
26 APPLICATIONS FOR INITIAL LICENSURE, LICENSE RENEWAL AND BOARD INVESTIGATIONS.
27 THE OMBUDSMAN-CITIZENS AIDE SHALL INCLUDE STATISTICS REGARDING THE NUMBER OF
28 CASES PROCESSED PURSUANT TO THIS PARAGRAPH IN THE ANNUAL REPORT PREPARED
29 PURSUANT TO THIS SUBSECTION. THE REPORT SHALL ALSO INCLUDE ANY
30 RECOMMENDATIONS FOR LEGISLATIVE OR ADMINISTRATIVE CHANGES TO IMPROVE THE
31 EFFICIENCY OF THE LICENSURE PROCESS.

32 B. After the conclusion of an investigation and notice to the head of
33 the agency pursuant to section 41-1379, the ombudsman-citizens aide may
34 present the ombudsman-citizens aide's opinion and recommendations to the
35 governor, the legislature, the office of the appropriate prosecutor or the
36 public, or any combination of these persons. The ombudsman-citizens aide
37 shall include in the opinion the reply of the agency, including those issues
38 that were resolved as a result of the ombudsman-citizens aide's preliminary
39 opinion or recommendation.

40 Sec. 8. Behavioral health professionals; grandfather provisions

41 The board of behavioral health examiners shall waive the documentation
42 of supervision requirements of title 32, chapter 33, Arizona Revised
43 Statutes, for an applicant requesting licensure if the applicant:

44 1. Meets the documentation requirements that were effective before
45 June 30, 1998.

1 2. Submits evidence satisfactory to the appropriate credentialing
2 committee that the applicant met all requirements of certification that were
3 in effect before July 1, 2004.

4 3. Had been actively engaged in the practice of the behavioral health
5 profession for which the applicant is seeking licensure before July 1, 2004
6 and has work experience that includes two years of full-time or the
7 equivalent part-time experience within a five year period.

8 4. Has obtained all of the required work experience in this state.

9 5. Has received the degree required for the level of certification
10 sought on or before June 30, 1998.

11 6. Pays the prescribed fee pursuant to title 32, chapter 33, Arizona
12 Revised Statutes.

13 7. Submits a completed application to the board on or before July 1,
14 2007.

15 Sec. 9. Reciprocity

16 For the purposes of determining if an applicant meets the reciprocity
17 requirements of section 32-3274, Arizona Revised Statutes, and rules adopted
18 by the board of behavioral health examiners relating to reciprocity, the
19 board must consider the applicant's educational, supervised work experience
20 and clinical supervision equivalencies.